

Bill no.:	HR 4157
Amendment no.:	2a
H.L.C.	
Date offered:	6/8/06
Disposition:	Not Agreed to by 10 years and 12 years

SUBSTITUTE
AMENDMENT TO MR. PALLONE'S ~~AMENDMENT~~
OFFERED BY MRS. CAPPS

Add at the end of title I [page 18, after line 19] the following new section:

1 SEC. 106. PRIVACY AND SECURITY PROTECTIONS.

2 Notwithstanding any other provision of this Act, the
3 Secretary of Health and Human Services shall provide for
4 standards for health information technology (as such term
5 is used in this title) that include the following privacy and
6 security protections:

7 (1) Except as provided in succeeding para-
8 graphs, each entity must—

9 (A) expressly recognize the individual's
10 right to privacy and security with respect to the
11 electronic disclosure of such information;

12 (B) permit individuals to exercise their
13 right to privacy and security in the electronic
14 disclosure of such information to another entity
15 by obtaining the individual's written or elec-
16 tronic informed consent, which consent may au-
17 thorize multiple disclosures;

18 (C) permit an individual to prohibit access
19 to certain categories of individuals (as defined

1 by the Secretary) of particularly sensitive infor-
2 mation, including data relating to infection with
3 the human immunodeficiency virus (HIV), to
4 mental health, to sexually transmitted diseases,
5 to reproductive health, to domestic violence, to
6 substance abuse treatment, to genetic testing or
7 information, and other information as defined
8 by the Secretary after consent has been pro-
9 vided under subparagraph (B).

10 (2) Informed consent may be inferred, in the
11 absence of a contrary indication by the individual—

12 (A) to the extent necessary to provide
13 treatment and obtain payment for health care
14 in emergency situations;

15 (B) to the extent necessary to provide
16 treatment and payment where the health care
17 provider is required by law to treat the indi-
18 vidual;

19 (C) if the health care provider is unable to
20 obtain consent due to substantial barriers to
21 communicating with the individual and the pro-
22 vider reasonably infers from the circumstances,
23 based upon the exercise of professional judg-
24 ment, that the individual does not object to the

1 disclosure or that the disclosure is in the best
2 interest of the individual; and

3 (D) to the extent that the information is
4 necessary to carry out or otherwise implement
5 a medical practitioner's order or prescription
6 for health services, medical devices or supplies,
7 or pharmaceuticals.

8 (3) The protections must prohibit the improper
9 use and disclosure of individually identifiable health
10 information by any entity.

11 (4) The protections must allow any individual
12 to enforce the individual's rights, and to have sanc-
13 tions and penalties imposed, against any entity that
14 has improperly obtained or disclosed individually
15 identifiable health information.

16 (5) The protections must require the use of rea-
17 sonable safeguards, including audit capabilities,
18 encryption, and other measures, against the risk of
19 loss or unauthorized access, destruction, use, modi-
20 fication, or disclosure of individually identifiable
21 health information.

22 (6) The protections must provide for notifica-
23 tion to any individual whose individually identifiable
24 health information has been lost, stolen, or used for
25 an unauthorized purpose by the entity responsible

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1 for the information and notification by the entity to
2 the Secretary.